

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

STEVEN PERRY, JR.,

Case No. 3:22-cv-00196-CLB¹

Plaintiff,

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

C/O BOONE-SHARP.

[ECF No. 32]

Defendant.

10 This case involves a civil rights action filed by Plaintiff Steven Perry, Jr. ("Perry")
11 against Defendant Debra Boone-Sharp ("Boone-Sharp"). Currently pending before the
12 Court is Boone-Sharp's motion for summary judgment. (ECF Nos. 32, 34.)² On April 20,
13 2023, the Court gave Perry notice of Boone-Sharp's motion pursuant to the requirements
14 of *Klingele v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), and *Rand v. Rowland*, 154 F.3d
15 952 (9th Cir. 1998). (ECF No. 36.) Despite the Court *sua sponte* granting an extension of
16 time, (ECF No. 39), Perry has failed to file an opposition to the motion. For the reasons
17 stated below, the Court grants Boone-Sharp's motion for summary judgment, (ECF No.
18 32).

I. BACKGROUND

A. Procedural History

Perry is an inmate currently in the custody of the Nevada Department of Corrections (“NDOC”) and is currently housed at the Ely State Prison (“ESP”). (ECF No. 4.) On May 2, 2022, proceeding *pro se*, Perry filed an inmate civil rights complaint pursuant to 42

¹ The parties have voluntarily consented to have this case referred to the undersigned to conduct all proceedings and entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. (ECF No. 29.)

² ECF No. 34 consists of Perry's medical records filed under seal

1 U.S.C. § 1983, (“Complaint”). (ECF No. 1-1.) Perry’s Complaint alleges the following: On
 2 September 26, 2020, Boone-Sharp called three members of the CERT team to persuade
 3 him to close his food flap. (ECF No. 4 at 4.) Although Perry had “captur[ed]” the food flap
 4 by placing his arm through it, he did not pose a threat of physical harm because his arm
 5 was “fully encased” within the red box surrounding the flap. (*Id.* at 4, 6.) Nevertheless, as
 6 Perry was seeking a “verbal resolution” with the CERT team, Boone-Sharp snuck up to
 7 the cell door and, with a “winding up motion,” slammed the red box’s metal slide onto
 8 Perry’s hand. (*Id.* at 5, 8.) The slide “cut[] into” the hand, causing bleeding and lacerations.
 9 (*Id.* at 5.) Perry later received “antibiotic ointment and medications for pain and swelling.”
 10 (*Id.*)

11 The Complaint also alleges that Perry engaged in protected activity on September
 12 20, 2020, by filing an emergency grievance about Boone-Sharp’s “sexual comments.” (*Id.*
 13 at 3, 10.) Four days later, Boone-Sharp allegedly called Perry a “snitch” in front of other
 14 inmates on the tier. (*Id.* at 4, 10.) Perry also alleges that, six days after he filed the
 15 emergency grievance (and two days after he filed a second emergency grievance against
 16 Boone-Sharp), Boone-Sharp slammed a metal slide onto his hand, which is the incident
 17 referenced to in the excessive force claim. (*Id.* at 4.)

18 The Complaint was screened in accordance with 28 U.S.C. § 1915A(a). (ECF No.
 19 3.) Based on the above allegations, the Court allowed Perry to proceed on an excessive
 20 force claim and a retaliation claim against Defendant Boone-Sharp. (*Id.*)

21 On August 9, 2023, Boone-Sharp filed the instant motion for summary judgment
 22 arguing (1) Perry failed to exhaust his administrative remedies as to the retaliation claim;
 23 (2) Perry cannot establish the elements of his retaliation claim; and (3) Boone-Sharp did
 24 not use excessive force. (ECF No. 32.) Perry did not oppose.

25 **B. Undisputed Facts re: Summary Judgment**

26 The following undisputed facts as presented by Defendant are as follows:
 27 According to an investigation detail report, on September 26, 2020, at approximately 9:45
 28 a.m., Officer Boone-Sharp was working her assigned post in the infirmary. (ECF No. 32-3

1 at 3.) Perry had a Red Box security restraint attached to the food slot on his cell door. (*Id.*)
2 ESP has a security restraint policy that is followed when it is necessary to restrain an
3 inmate—Operation Procedure (“OP”) 407. (ECF No. 32-2.) Pursuant to OP 407, attaching
4 a Red Box security restraint to the food slot on a cell door is part of this policy. (*Id.* at 8-9.)
5 A Red Box’s purpose is to assist and protect correctional officers when serving food to an
6 inmate through the food slot or when delivering an item to an inmate. (*Id.*)

7 During the incident in question, Perry’s Red Box was captured from breakfast time
8 because Perry was upset that Boone-Sharp had given him a diet loaf at breakfast. (ECF
9 No. 32-3 at 3.) Correctional Officers Guzman, Ariziga, and Brown were talking to Perry
10 and Boone-Sharp approached Perry’s cell and noticed the Red Box was still open. (*Id.*)
11 OP 407 required the Red Box security restraint to be closed unless something was being
12 delivered to him. (ECF No. 32-2 at 8-9.) Boone-Sharp attempted to close the slide, but
13 Perry put his hand in the Red Box and forced the slide back at Boone-Sharp. (ECF No.
14 32-3 at 3.) This caused Boone-Sharp’s wrist to “jar” and her elbow to slam back into the
15 handle of the next cell. (*Id.*)

16 Following the incident, Officer Jose Guzman Jr., took photographs of Perry’s right
17 hand. (ECF No. 32-4.) Later that afternoon, medical staff saw Perry and he told medical
18 staff that he cut his hand on the food slot. (ECF No. 34-3 at 2 (sealed).) Perry stated that
19 it was “not painful,” but that he had some “mild swelling.” (*Id.*) Medical staff noted a
20 superficial cut on the top of Perry’s right hand but noted no active bleeding and no sign of
21 infection. (*Id.*) For treatment, Perry received antibiotic ointment and ibuprofen. (*Id.*) In
22 November 2020, Perry spoke again with medical staff about his right hand. Medical staff
23 noted that Perry was able to make a fist with his right hand, and that there was no visible
24 swelling, and Perry was provided ibuprofen. (ECF No. 34-4 (sealed).) On October 13,
25 2021, medical staff again saw Perry for right hand, but Perry refused to have x-rays taken.
26 (ECF No. 34-5 (sealed).)

27 In support of the motion for summary judgment, Boone-Sharp submitted an
28 affidavit, which stated that she would not have attempted to close the Red Box if she knew

1 Perry's hand would stop the Red Box from closing. (ECF No. 32-12 at 3.) Boone-Sharp
2 stated she did not intend to cause Perry any harm when she attempted to close the Red
3 Box and she did not see Perry's hand when she attempted to close the Red Box security
4 restraint attached to the food slot on Perry's cell. (*Id.*) Boone-Sharp was only attempting
5 to comply with the requirements of OP 407. (*Id.*) Boone-Sharp viewed this event as an
6 accident and did not intend to harm Perry, and she is "sorry that it happened." (*Id.*)

7 According to Perry's Inmate Disciplinary History Report, Perry has a long
8 disciplinary history, including several charges related to "propelling" based on throwing
9 substances from his cell. These incidents occurred on at least the following dates: March
10 9, 2010, January 11, 2020, February 9, 2020, July 8, 2020, and July 11, 2020. (ECF No.
11 32-7.) Perry also "captured" his food slot on several occasions resulting in disciplinary
12 charges on at least the following dates: February 22, 2008, April 29, 2009, January 11,
13 2020, February 19, 2020, March 15, 2020, May 16, 2020, July 8, 2020, July 11, 2020,
14 September 10, 2020, September 15, 2020, and September 25, 2020. (*Id.*)

15 On September 20, 2020, Perry filed an emergency grievance, #2006-31-08365,
16 against Officer Boone-Sharp. (ECF No. 32-5; 32-8 at 23.) Perry stated he had a PREA
17 complaint against Boone-Sharp. (ECF No. 32-8 at 23.) The grievance was denied as not
18 an emergency, and it does not appear Perry filed any further grievances related to this
19 issue. (*Id.*)

20 On September 24, 2020, Perry filed an emergency grievance, #2006-31-08367,
21 against Officer Boone-Sharp. (ECF No. 32-6; ECF No. 32-8 at 22.) The grievance was
22 denied as not an emergency. (*Id.*) Perry then filed an informal grievance regarding the
23 excessive force incident, #2006-31-08464. (ECF No. 32-8 at 21.) Perry stated Boone-
24 Sharp deliberately slammed his right hand inside his Red Box. (*Id.*) The response at the
25 First Level from Warden William Gittere stated in relevant part:

26 A formal Use of Force Review was completed following your allegations
27 related to that incident and submitted for my review before being forwarded
28 to the Deputy Director of Operations and the Inspector General's Office for
their final review.

1 Based on my review of video related to the incident, reports submitted by
 2 participants and witness[es], and subsequent interviews of staff members
 3 and inmates who participated or witnessed the incident, no officer
 4 misconduct was identified. Per those reports, **you admitted to reaching in**
and pushing the inner slide door of the food slot isolation box back
open when Officer Boone-Sharp attempted to close it while you were
speaking to other officers.

5 The force that you used to push the slide back open actually caused Officer
 6 Boone-Sharp to hit her elbow against the opposite door. Your actions were
 7 the cause of any injuries that you sustained. When you informed officers that
 8 you had been allegedly injured, you were assessed and offered treatment
 9 by medical staff.

10 My assessment of this incident was that it was not a use of force at all. An
 11 officer attempted to secure a door on a food slot isolation box when it was
 12 clear to do so. **You stuck your hand in the way and shoved the door**
open, allegedly causing minor injury to yourself. You are lucky that the
 13 officer was not more seriously injured, and are advised to never do that
 14 again. Your remedies are noted and rejected.

15 (*Id.* at 22 (emphasis added).)

16 **II. LEGAL STANDARDS**

17 “The court shall grant summary judgment if the movant shows that there is no
 18 genuine dispute as to any material fact and the movant is entitled to judgment as a matter
 19 of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The
 20 substantive law applicable to the claim determines which facts are material. *Coles v.*
Eagle, 704 F.3d 624, 628 (9th Cir. 2012) (citing *Anderson v. Liberty Lobby*, 477 U.S. 242,
 21 248 (1986)). Only disputes over facts that address the main legal question of the suit can
 22 preclude summary judgment, and factual disputes that are irrelevant are not material.
Frlekin v. Apple, Inc., 979 F.3d 639, 644 (9th Cir. 2020). A dispute is “genuine” only where
 23 a reasonable jury could find for the nonmoving party. *Anderson*, 477 U.S. at 248.

24 The parties subject to a motion for summary judgment must: (1) cite facts from the
 25 record, including but not limited to depositions, documents, and declarations, and then (2)
 26 “show[] that the materials cited do not establish the absence or presence of a genuine
 27 dispute, or that an adverse party cannot produce admissible evidence to support the fact.”
 28 Fed. R. Civ. P. 56(c)(1). Documents submitted during summary judgment must be

1 authenticated, and if only personal knowledge authenticates a document (i.e., even a
 2 review of the contents of the document would not prove that it is authentic), an affidavit
 3 attesting to its authenticity must be attached to the submitted document. *Las Vegas Sands,*
 4 *LLC v. Neheme*, 632 F.3d 526, 532-33 (9th Cir. 2011). Conclusory statements, speculative
 5 opinions, pleading allegations, or other assertions uncorroborated by facts are insufficient
 6 to establish the absence or presence of a genuine dispute. *Soremekun v. Thrifty Payless,*
 7 *Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).

8 The moving party bears the initial burden of demonstrating an absence of a genuine
 9 dispute. *Soremekun*, 509 F.3d at 984. “Where the moving party will have the burden of
 10 proof on an issue at trial, the movant must affirmatively demonstrate that no reasonable
 11 trier of fact could find other than for the moving party.” *Soremekun*, 509 F.3d at 984.
 12 However, if the moving party does not bear the burden of proof at trial, the moving party
 13 may meet their initial burden by demonstrating either: (1) there is an absence of evidence
 14 to support an essential element of the nonmoving party’s claim or claims; or (2) submitting
 15 admissible evidence that establishes the record forecloses the possibility of a reasonable
 16 jury finding in favor of the nonmoving party. See *Pakootas v. Teck Cominco Metals, Ltd.*,
 17 905 F.3d 565, 593-94 (9th Cir. 2018); *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d
 18 1099, 1102 (9th Cir. 2000). The court views all evidence and any inferences arising
 19 therefrom in the light most favorable to the nonmoving party. *Colwell v. Bannister*, 763
 20 F.3d 1060, 1065 (9th Cir. 2014). If the moving party does not meet its burden for summary
 21 judgment, the nonmoving party is not required to provide evidentiary materials to oppose
 22 the motion, and the court will deny summary judgment. *Celotex*, 477 U.S. at 322-23.

23 Where the moving party has met its burden, however, the burden shifts to the
 24 nonmoving party to establish that a genuine issue of material fact actually exists.
 25 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, (1986). The
 26 nonmoving must “go beyond the pleadings” to meet this burden. *Pac. Gulf Shipping Co.*
 27 *v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 897 (9th Cir. 2021) (internal quotation
 28 omitted). In other words, the nonmoving party may not simply rely upon the allegations or

1 denials of its pleadings; rather, they must tender evidence of specific facts in the form of
 2 affidavits, and/or admissible discovery material in support of its contention that such a
 3 dispute exists. See Fed. R. Civ. P. 56(c); *Matsushita*, 475 U.S. at 586 n. 11. This burden
 4 is “not a light one,” and requires the nonmoving party to “show more than the mere
 5 existence of a scintilla of evidence.” *Id.* (quoting *In re Oracle Corp. Sec. Litig.*, 627 F.3d
 6 376, 387 (9th Cir. 2010)). The non-moving party “must come forth with evidence from
 7 which a jury could reasonably render a verdict in the non-moving party’s favor.” *Pac. Gulf*
 8 *Shipping Co.*, 992 F.3d at 898 (quoting *Oracle Corp. Sec. Litig.*, 627 F.3d at 387). Mere
 9 assertions and “metaphysical doubt as to the material facts” will not defeat a properly
 10 supported and meritorious summary judgment motion. *Matsushita Elec. Indus. Co. v.*
 11 *Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

12 When a *pro se* litigant opposes summary judgment, his or her contentions in
 13 motions and pleadings may be considered as evidence to meet the non-party’s burden to
 14 the extent: (1) contents of the document are based on personal knowledge, (2) they set
 15 forth facts that would be admissible into evidence, and (3) the litigant attested under
 16 penalty of perjury that they were true and correct. *Jones v. Blanas*, 393 F.3d 918, 923
 17 (9th Cir. 2004).

18 Upon the parties meeting their respective burdens for the motion for summary
 19 judgment, the court determines whether reasonable minds could differ when interpreting
 20 the record; the court does not weigh the evidence or determine its truth. *Velazquez v. City*
 21 *of Long Beach*, 793 F.3d 1010, 1018 (9th Cir. 2015). The court may consider evidence in
 22 the record not cited by the parties, but it is not required to do so. Fed. R. Civ. P. 56(c)(3).
 23 Nevertheless, the court will view the cited records before it and will not mine the record for
 24 triable issues of fact. *Oracle Corp. Sec. Litig.*, 627 F.3d at 386 (if a nonmoving party does
 25 not make nor provide support for a possible objection, the court will likewise not consider
 26 it).

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1 **III. DISCUSSION**2 **A. Excessive Force**

3 The Eighth Amendment's proscription on cruel and unusual punishment forbids
 4 prison officials from inflicting "the unnecessary and wanton infliction of pain . . ." *Whitley*
 5 *v. Albers*, 475 U.S. 312, 319 (1986). Encompassed within the Eighth Amendment is a bar
 6 on the use of excessive force against prisoners. *See Hudson v. McMillian*, 503 U.S. 1, 7-
 7 10 (1992). Courts in the Ninth Circuit apply a five-part balancing test to excessive force
 8 claims: (1) the extent of the inmate's injuries; (2) the need for application of force; (3) the
 9 relationship between the need and amount of force; (4) the threat reasonably perceived
 10 by prison officials; and (5) any efforts that officials utilized to "temper the severity of a
 11 forceful response." *Id.* at 7 (quoting *Whitley*, 475 U.S. at 321); *see also Wilkins v. Gaddy*,
 12 559 U.S. 34, 36-38 (2010); *Martinez v. Stanford*, 323 F.3d 1178, 1184 (9th Cir. 2003).

13 The inmate must demonstrate that officials acted maliciously and sadistically to
 14 prevail. "[W]henever prison officials stand accused of using excessive physical force in
 15 violation of the [Eighth Amendment], the core judicial inquiry is . . . whether force was
 16 applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically
 17 to cause harm." *Hudson*, 503 U.S. at 6-7. As the Ninth Circuit has explained,

18 [th]e "malicious and sadistic" standard arose out of "the need to maintain or
 19 restore discipline" inside the prison. When a prison disturbance occurs,
 20 prison officials must make "decisions 'in haste, under pressure, and
 21 frequently without the luxury of a second chance.'" In these situations, prison
 22 officials are "accorded wide-ranging deference" and therefore, prisoners
 23 alleging excessive force must show that the force was applied "maliciously
 24 and sadistically to cause harm."

25 *Wood v. Beauclair*, 692 F.3d 1041, 1049-50 (9th Cir. 2012) (quoting *Hudson*, 503 U.S. at
 26 6 and *Whitley*, 475 U.S. at 320). Thus, the Court must be careful when reviewing the
 27 factors to verify indicia of "such wantonness with respect to the unjustified infliction of harm
 28 as [is] tantamount to a knowing willingness that it occur." *Hudson*, 503 U.S. at 9. Moreover,
 29 there is no need for a showing of serious injury as a result of the force, but the lack of such

1 injury is relevant to the inquiry. See *id.* at 7-9; *Martinez*, 323 F.3d at 1184; *Schwenk v.*
 2 *Hartford*, 204 F.3d 1187, 1196 (9th Cir. 2000).

3 The Court will first address the merits of Perry's excessive force claim. Excessive
 4 force cases "nearly always requires a jury to sift through disputed factual contentions, and
 5 to draw inferences therefrom," and for this reason, the Ninth Circuit has "held on many
 6 occasions that summary judgment or judgment as a matter of law in excessive force cases
 7 should be granted sparingly." *Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002); *see also*
 8 *Lolli v. Cnty. of Orange*, 351 F.3d 410, 415–16 (9th Cir. 2003); *Liston v. Cnty. of Riverside*,
 9 120 F.3d 965, 976 n. 10 (9th Cir. 1997) (citing cases).

10 In the motion for summary judgment, Boone-Sharp contends that balancing the
 11 *Hudson* factors weighs in favor of Boone-Sharp being granted summary judgment on the
 12 excessive use of force claim. (ECF No. 32 at 11-15.) She contends that Perry's alleged
 13 injury was minimal even if caused by Boone-Sharp, the incident was nothing more than
 14 an accident, and as no force was directed at Perry. (*Id.*)

15 As discussed above, the undisputed facts, uncontradicted by Perry, are as follows.
 16 According to an investigation detail report, on September 26, 2020, at approximately 9:45
 17 a.m., Officer Boone-Sharp was working her assigned post in the infirmary. (ECF No. 32-3
 18 at 3.) Perry had a Red Box security restraint attached to the food slot on his cell door. (*Id.*)
 19 During the incident in question, Perry's Red Box was captured from breakfast time
 20 because Perry was upset that Boone-Sharp had given him a diet loaf at breakfast. (*Id.*)
 21 Correctional Officers Guzman, Ariziga, and Brown were talking to Perry and Boone-Sharp
 22 approached Perry's cell and noticed the Red Box was still open. (*Id.*) Boone-Sharp
 23 attempted to close the slide, but Perry put his hand in the Red Box and forced the slide
 24 back at Boone-Sharp. (*Id.*) This caused Boone-Sharp's wrist to "jar" and her elbow to slam
 25 back into the handle of the next cell. (*Id.*)

26 Following the incident, Officer Jose Guzman Jr., took photographs of Perry's right
 27 hand. (ECF No. 32-4.) Later that afternoon, medical staff saw Perry and he told medical
 28 staff that he cut his hand on the food slot. (ECF No. 34-3 at 2 (sealed).) Perry stated that

1 it was “not painful,” but that he had some “mild swelling.” (*Id.*) Medical staff noted a
2 superficial cut on the top of Perry’s right hand but noted no active bleeding and no sign of
3 infection. (*Id.*) For treatment, Perry received antibiotic ointment and ibuprofen. (*Id.*) In
4 November 2020, Perry spoke again with medical staff about his right hand. Medical staff
5 noted that Perry was able to make a fist with his right hand, and that there was no visible
6 swelling, and Perry was provided ibuprofen. (ECF No. 34-4 (sealed).) On October 13,
7 2021, medical staff again saw Perry for right hand, but Perry refused to have x-rays taken.
8 (ECF No. 34-5 (sealed).)

9 In support of the motion for summary judgment, Boone-Sharp submitted an
10 affidavit, which stated that she would not have attempted to close the Red Box if she knew
11 Perry’s hand would stop the Red Box from closing. (ECF No. 32-12 at 3.) Boone-Sharp
12 stated she did not intend to cause Perry any harm when she attempted to close the Red
13 Box and she did not see Perry’s hand when she attempted to close the Red Box security
14 restraint attached to the food slot on Perry’s cell. (*Id.*) Boone-Sharp was only attempting
15 to comply with the requirements of OP 407. (*Id.*) Boone-Sharp viewed this event as an
16 accident and did not intend to harm Perry, and she is “sorry that it happened.” (*Id.*)

17 The response to Perry’s grievance related to the incident showed that no officer
18 misconduct was identified, and Perry admitted to reaching in and pushing the inner slide
19 door of the food slot isolation box back open when Boone-Sharp was attempting to close
20 it. (ECF No. 32-8 at 22.)

21 Here, the Court finds that the majority of the evidence supports Boone-Sharp’s
22 assertion that the incident in question was merely an accident. Nonetheless, based on the
23 undisputed evidence, all five *Hudson* factors still objectively weigh against finding an
24 Eighth Amendment violation. See *Hudson*, 503 U.S. at 6-7. First, using force generally
25 was necessary. Perry implicitly threatened Boone-Sharp when he stuck his hand out of
26 his food slot, especially in light of Perry’s long disciplinary history.

27 Second, the amount of force used was proportional to the need. Boone-Sharp used
28 minimal force to close the Red Box and the evidence shows she did not knowingly or

1 intentionally close the door on Perry's hand. There is no evidence that Boone-Sharp used
2 other, greater force to accomplish this. Thus, the force used was objectively minimal and
3 proportional to the need to maintain security by closing the Red Box. Third, Perry's injuries
4 were minimal, if not de minimis. Thus, both the force Boone-Sharp used and Perry's
5 injuries were insignificant here.

6 Next, the threat Boone-Sharp reasonably perceived was significant. As discussed
7 above, Perry had an extensive disciplinary history, which warranted the placement of the
8 Red Box to begin with. Thus, when Perry failed to keep himself free of the food slot, a
9 reasonable officer would have felt threatened. Finally, Perry seems to have acknowledged
10 that he reached in and pushed the inner slide of his door open when Boone-Sharp was
11 attempting to close it, resulting in him injuring himself.

12 Based on the evidence before the Court, all five of the relevant *Hudson* factors
13 weigh in favor of finding that Boone-Sharp did not use excessive force. There is no dispute
14 as to the minimal amount of force used, the circumstances under which it was applied,
15 and the minimal injuries to Perry as a result of the minimal force. As such, there is no
16 genuine issue of material fact as to the merits of the excessive force claim. Perry does
17 not, and cannot, show that Boone-Sharp applied force maliciously and sadistically to
18 cause harm rather than in a good-faith effort to maintain or restore discipline. See *Hudson*,
19 503 U.S. at 6. To the contrary, Boone-Sharp applied a minimal amount of force necessary
20 in a good-faith effort to maintain order, and it was not done maliciously or sadistically to
21 cause harm. Accordingly, the Court recommends Boone-Sharp's motion for summary
22 judgment be granted as to the excessive force claim.

23 **B. Retaliation**

24 Next, the Court addresses the merits of Perry's retaliation claim. Perry's retaliation
25 claim is premised upon allegations that Perry engaged in protected activity on September
26 20, 2020, by filing an emergency grievance about Boone-Sharp's "sexual comments."
27 (ECF No. 4 at 3, 10.) Four days later, Boone-Sharp allegedly called Perry a "snitch" in
28 front of other inmates on the tier. (*Id.* at 4, 10.) Perry also alleges that, six days after he

1 filed the emergency grievance (and two days after he filed a second emergency grievance
2 against Boone-Sharp), Boone-Sharp slammed a metal slide onto his hand, which is the
3 incident referenced to in the excessive force claim. (*Id.* at 4.)

4 It is well established in the Ninth Circuit that prisoners may seek redress for
5 retaliatory conduct by prison officials under § 1983. *Rhodes v. Robinson*, 408 F.3d 559,
6 567 (9th Cir. 2004); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). “Prisoners have
7 a First Amendment right to file grievances against prison officials and be free from
8 retaliation for doing so.” *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012).

9 “A prison inmate retains those First Amendment rights that are not inconsistent with
10 his status as a prisoner or with the legitimate penological objectives of the corrections
11 system.” *Pell v. Procunier*, 417 U.S. 817, 822 (1974). Within the prison context, a viable
12 retaliation claim has five elements: (1) a state actor took some adverse action against the
13 inmate, (2) because of, (3) the inmate’s protected conduct, and that the action, (4) chilled
14 the inmate’s exercise of his First Amendment rights, and (5) did not reasonably advance
15 a legitimate correctional goal. *Rhodes*, 408 F.3d at 567–68. The adverse action must be
16 such that it “would chill or silence a person of ordinary firmness from future First
17 Amendment activities.” *Watison*, 668 F.3d at 1114 (quoting *Rhodes*, 408 F.3d at 568).

18 To prevail against Defendants’ motion for summary judgment, Plaintiff must
19 demonstrate a triable issue of material fact on each element of his retaliation claim.
20 *Brodheim*, 584 F.3d at 1269 n.3. An inmate must submit evidence, either direct or
21 circumstantial, to establish a link between the exercise of constitutional rights and the
22 allegedly retaliatory action. *Pratt v. Rowland*, 65 F.3d 802, 806-07 (9th Cir. 1995). “[A]
23 plaintiff must show that his protected conduct was ‘the “substantial” or “motivating” factor
24 behind the defendant’s conduct.’” *Brodheim*, 584 F.3d at 1271 (quoting *Soriano’s Gasco,
Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989)). The plaintiff “need only ‘put forth
25 evidence of retaliatory motive, that, taken in the light most favorable to him, presents a
26 genuine issue of material fact as to [the defendant’s] intent.’” *Id.* (quoting *Bruce v. Ylst*, 351
27 F.3d 1283, 1289 (9th Cir. 2003)).

1 To raise a triable issue as to motive, plaintiff must offer “either direct evidence of
 2 retaliatory motive or at least one of three general types of circumstantial evidence [of that
 3 motive].” *McCollum v. Cal. Dep’t of Corr. and Rehab.*, 647 F.3d 870, 882 (9th Cir. 2011)
 4 (citation and quotation marks omitted). Circumstantial motive evidence may include: “(1)
 5 proximity in time between protected speech and the alleged retaliation; (2) [that] the
 6 [defendant] expressed opposition to the speech; [or] (3) other evidence that the reasons
 7 proffered by the [defendant] for the adverse ... action were false and
 8 pretextual.” *Id.* (internal citation and quotation marks omitted). However, “mere speculation
 9 that defendants acted out of retaliation is not sufficient.” *Wood v. Yordy*, 905 (9th Cir.
 10 2014).

11 Boone-Sharp contends Perry cannot prevail on his retaliation claim as there is no
 12 evidence Boone-Sharp knew of the emergency grievances and because of this called him
 13 a snitch or closed his hand in the Red Box. (ECF No. 32.) The Court agrees. Based on
 14 the evidence in the record, there is no causal connection between the alleged retaliatory
 15 acts and the filing of grievances. Further, Perry’s mere speculation that there is a causal
 16 connection is not enough to raise a genuine issue of material fact. *Nelson v. Pima*
 17 *Community College*, 83 F.3d 1075, 1081-82 (9th Cir. 1996). Because Perry did not file an
 18 opposition to the motion for summary judgment, he has not presented any evidence to the
 19 Court showing that his First Amendment activity was the substantial or motivating factor
 20 behind Boone-Sharp’s actions, and, therefore, he has not carried his burden of
 21 demonstrating a genuine issue for trial. As no reasonable jury could conclude that the
 22 alleged retaliatory acts occurred because of the filing of grievances, Boone-Sharp is
 23 entitled to summary judgment.³ *Matsushita*, 475 U.S. at 586.

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 27 ³ Because the Court has determined that the motion for summary judgment be
 28 granted on merits of this claim, it need not address Boone-Sharp’s argument regarding
 exhaustion.

IV. CONCLUSION

Consistent with the above, **IT IS ORDERED** that Boone-Sharp's motion for summary judgment, (ECF No. 32), be **GRANTED**.

IT IS FURTHER ORDERED that the Clerk of Court **ENTER JUDGMENT** accordingly and **CLOSE** this case.

DATED: October 24, 2023


UNITED STATES MAGISTRATE JUDGE